**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| SUSAN STITT, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. |
| | : | 3:04 CV 577 (CFD) |
| CONNECTICUT COLLEGE | : | |
| Defendant. | : | |

**RULING ON MOTION TO DISMISS**

This is an employment discrimination case, in which the plaintiff, Susan Stitt, asserts that she was discriminated against in the terms and conditions of her employment at Connecticut College ("the College"). The plaintiff brought a three count complaint against the College in the Superior Court of Connecticut, and the College removed the action to the U. S. District Court for the District of Connecticut. The complaint sets forth federal and state statutory claims of age and gender discrimination and a Connecticut common law claim of negligent infliction of emotional distress. The College has moved to dismiss the negligent infliction of emotional distress claim on the ground that the plaintiff has failed to state a claim upon which relief may be granted. For the following reasons, the motion to dismiss count three **[Doc. # 20]** is **GRANTED**.

## I Background

Only a brief recitation of the facts alleged in the complaint is necessary for resolution of the College's motion to dismiss. In 1998, the plaintiff was hired by the College as its director of development. In November of 2000, during the College's search for a new president, the plaintiff was asked to become the acting vice president of development and alumni relations. The plaintiff accepted this position, conditioned upon a representation that she would be able to

return to the position of director of development once a new president was found. The plaintiff served in that position from January to December 2001, at which time she returned to her position of director of development. At that time, Aaron Bayer became the acting vice president of development and alumni relations. In May 2002, Mark LaFontaine was hired as vice president of advancement, and, during a meeting in June 2002, LaFontaine communicated his "perception" of the plaintiff's position as senior major gift officer, rather than as director of development.

On June 21, 2002, the plaintiff received a negative performance evaluation from Bayer. By September 2002, the plaintiff had been demoted to a position entitled "senior development officer-major gifts." In that position she reported to Charles Clark, the new director of major gifts. The complaint further alleges that, in that position, she was assigned a difficult work territory, and that virtually all of her top prospects–those individuals believed capable and likely to make the largest contributions to the College–were reassigned to other major gift officers and LaFontaine. On February 19, 2003, the plaintiff received a "Six Month Performance Review" from Clark, which criticized the plaintiff's performance on certain performance criteria, and requested significant improvement in each area. Six weeks later, on March 27, 2003, the plaintiff was summoned to a meeting with Clark and LaFontaine, during which they informed her that she was being terminated because she had failed to show any improvement as directed in the February 19, 2003 performance review, and because certain unidentified individuals had "lost faith" in her abilities.

## II Standard

The College has moved to dismiss count three pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. When considering a Rule 12(b)(6)

motion to dismiss, a court accepts all factual allegations in the complaint as true and draws inferences in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); LaBounty v. Adler, 933 F.2d 121, 123 (2d Cir. 1991). Dismissal is not warranted unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Weiss v. Wittcoff, 966 F.2d 109, 112 (2d Cir. 1992). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (quoting Scheuer, 416 U.S. at 232). "The question is 'whether or not it appears to a certainty under existing laws that no relief can be granted under any set of facts that might be proved in support of' the claims." Velez v. City of New London, 903 F.Supp. 286, 289 (D.Conn. 1995) (quoting De La Cruz v. Tormey, 582 F.2d 45, 48 (9th Cir. 1978)).

**III Discussion**

Count three, which is designated "infliction of emotional distress," alleges that the College's actions "constitute negligent infliction of emotional distress," and that "the [College] knew or should have known that its actions were based on pretext, were dishonest and harmful, and ran the risk of causing Plaintiff to suffer emotional distress." The College moves to dismiss count three on the ground it is based on conduct that occurred during the plaintiff's employment, and not during the termination process itself.[1] **(Brief pg. 8)**

[1]In its motion to dismiss, the College interprets count three as setting forth claims for both intentional and negligent infliction of emotional distress. In her memorandum in opposition, however, the plaintiff states that "[c]ount three of the Complaint sets forth a cause of action for negligent infliction of emotion distress." Consequently, the Court need not address the College's arguments concerning intentional infliction of emotional distress.

In Perodeau v. Hartford, 259 Conn. 729, 762-63, 792 A.2d 752 (2002), the Connecticut Supreme Court held that an individual employee "may not be found liable for negligent infliction of emotional distress arising out of conduct occurring within a continuing employment context, as distinguished from conduct occurring in the termination of employment." Id. at 744. The rationale for this holding was that subjecting employees to lawsuits for negligent infliction of emotional distress would have a "pervasive chilling effect" which "outweigh[s] the safety interest of employees in being protected from negligent infliction of emotional distress," and "in light of the inherently competitive and stressful nature of the workplace and the difficulties surrounding proof of emotional distress, extending the tort of negligent infliction of emotional distress to ongoing employment relationships would open the door to spurious claims." Id. at 758. Therefore, "after Perodeau, only conduct occurring in the process of termination can be a basis for recovery for negligent infliction of emotional distress in the employment context." Brunson v. Bayer Corp., 237 F.Supp.2d 192, 208 (D.Conn. 2002); see also Antonopolous v. Zitnay, __ F.Supp.2d __, __, 2005 WL 488683 at *7 (D.Conn. 2005) ("Recovery for negligent infliction of emotional distress is limited to the termination process itself, not conduct preceding that discharge, be it constructive or actual").[2]

Consequently, the only issue before the Court is whether the plaintiff has alleged conduct occurring during the "termination process" that is sufficiently egregious to sustain a negligent

[2]"Although Perodeau concerned the liability of an individual [employee] defendant, the courts have repeatedly held that the reasoning applies equally to corporate employers." Pecoraro v. New Haven Register, 344 F.Supp.2d 840, 845 (D.Conn. 2004) (citing cases); see also Brunson v. Bayer Corp., 237 F.Supp.2d 192, 208 (D.Conn. 2002) ("every court applying the reasoning of Perodeau has recognized Perodeau as barring such a cause of action against corporate defendants"). This Court recently reached this same conclusion. See Antonopolous v. Zitnay, __ F.Supp.2d __, __, 2005 WL 488683 at *7 (D.Conn. 2005).

infliction of emotional distress claim.[3] In regard to the plaintiff's actual termination, the complaint merely alleges that, "on March 27, 2003, plaintiff was summoned to a meeting with a college human resources representative, Charles Clark, and Mark LaFontaine [Vice President of Advancement for the College.] In this meeting, plaintiff was terminated for allegedly failing to show any improvement as requested in [a prior performance review] and because certain unspecified individuals had 'lost faith' in plaintiff's abilities." This allegation falls short of stating a claim for negligent infliction of emotional distress.

The plaintiff argues in her memorandum in opposition, however, that the actual termination process extended over a period of several months, and was not limited to that one meeting on March 27, 2003. Moreover, in count three of the complaint, the plaintiff alleges that:

> Through the [College's] treatment of Plaintiff during the period of May 2002 through the termination of her employment, the Plaintiff has suffered anxiety, humiliation, depression, inconvenience, annoyance, emotional distress, and pain and suffering, all as a proximate cause of the [College's] tortious acts.

Thus, it appears that the plaintiff is claiming that termination process covered the period from May 2002 (when Mark LaFontaine became her superior) to March 27, 2003 (the actual date of termination). A Connecticut Superior Court decision rejected a similar argument because, if "the termination would be said to permeate the entire course of employment, then the reasoning of Perodeau would be hollow indeed." Michaud v. Farmington Community Ins. Agency, 2002 WL 31415478 at *3 (Conn.Super.Ct. Sept.25, 2002); see also Pecoraro v. New Haven Register, 344

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[3]To establish a claim of negligent infliction of emotional distress, the plaintiff must prove the following elements: (1) that defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) that plaintiff's distress was foreseeable; (3) that her emotional distress was severe enough that it might result in illness or bodily harm; and (4) that defendant's conduct was the cause of the plaintiff's distress. Carrol v. Allstate Ins. Co., 262 Conn. 433, 444, 815 A.2d 119 (2003); Barrett v. Danbury Hospital, 232 Conn. 242, 261-62, 654 A.2d 748 (1995).

F.Supp.2d 840, 845 (D.Conn. 2004) ("Based on the holdings of Perodeau and Michaud, this Court holds that no cause of action will lie for negligent infliction of emotional distress under the facts as alleged"). The Court finds those decisions persuasive. The actions during that extensive time period which the plaintiff now complains of include routine employment matters such as job performance evaluations, work assignments and job transfers and title changes. While these actions may have had some role in the plaintiff's termination, the Court cannot find that, taken together, they constitute a "termination process," as that term was used by the Connecticut Supreme Court in Perodeau. Indeed, Perodeau counsels that:

> It is clear that such individuals reasonably should expect to be subject to routine employment-related conduct, including performance evaluations, both formal and informal; decisions related to such evaluations, such as those involving transfer, demotion, promotion and compensation; similar decisions based on the employer's business needs and desires, independent of the employee's performance; and disciplinary or investigatory action arising from actual or alleged employee misconduct. In addition, such individuals reasonably should expect to be subject to other vicissitudes of employment, such as workplace gossip, rivalry, personality conflicts and the like.

Thus, it is only conduct occurring during and after the episode of the actual employment termination that can be the basis for a negligent infliction of emotional distress claim under Connecticut law. See Michaud v. Farmington Community Ins. Agency, 2002 WL 31415478 at *3 (Conn.Super.Ct. Sept.25, 2002) ("Termination means the ending, not the conduct which caused the ending. When one analyzes the policy reasons underlying Perodeau, one sees that conduct taking place within the employment relationship, even if wrongful and providing the basis for the claim of unlawful discharge, cannot provide the factual predicate for the emotional distress claim").

Consequently, the College's motion to dismiss count three **[Doc. # 20]** is **GRANTED**.

SO ORDERED this **21st** day of March 2005, at Hartford, Connecticut.

**/s/ CFD**
**CHRISTOPHER F. DRONEY**
**UNITED STATES DISTRICT JUDGE**